STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 6, 2010
v	No. 290852 Eaton Circuit Court
BARAKA AMIRA NORWOOD, Defendant-Appellant.	LC No. 08-020233-FC

Before: MURRAY, P.J., and SAAD and M.J. KELLY, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of armed robbery, MCL 750.529, and one count of possession of a firearm while committing a felony (felony-firearm), MCL 750.227b. Defendant was sentenced as a third habitual offender, MCL 769.12, to serve concurrent prison terms of 175 months to 40 years for the armed robbery convictions, plus 24 months' consecutive imprisonment for the felony-firearm conviction. Defendant appeals as of right, and we affirm.

Two men robbed an Eaton County Taco Bell at gunpoint during the early morning hours of July 23, 2008. Defendant and a companion were taken into custody later that morning and two handguns, gloves, a backpack, masks or bandanas, and approximately $200 cash were recovered from their vehicle. The two employees working during the robbery identified defendant as one of the robbers. After his arrest, defendant admitted involvement in the robbery.

Prior to trial, defendant moved to suppress evidence seized from his vehicle, as well as his statements to police, arguing that the officer who initially approached him lacked sufficient basis for a constitutional seizure. The trial court denied that motion and the matter proceeded to trial. Defendant now challenges the denial of his motion to suppress.

Defendant preserved this issue by filing a motion to suppress evidence, which the trial court denied. *People v Eccles*, 260 Mich App 379, 385; 677 NW2d 76 (2004). We review de novo a trial court's conclusions of law made in a decision to suppress evidence, *People v Zahn*, 234 Mich App 438, 445; 594 NW2d 120 (1999), while a trial court's factual findings related to the same motion are reviewed for clear error, *People v Chambers*, 195 Mich App 118, 121; 489 NW2d 168 (1992). "A decision is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made." *People v Rasmussen*, 191 Mich App 721, 724; 478 NW2d 752 (1992).

Both the United States Constitution and the Michigan Constitution protect against unreasonable searches and *seizures*, see US Const, Am IV; Const 1963, art 1 § 11, and therefore this protection is not activated unless a seizure actually occurs. And not all encounters between police officers and the public implicate Fourth Amendment protections. *People v Jenkins*, 472 Mich 26, 32; 691 NW2d 759 (2005). "[T]o constitute a seizure for purposes of the Fourth Amendment there must be either the application of physical force or the submission by the suspect to an officer's show of authority." *People v Lewis*, 199 Mich App 556, 559; 502 NW2d 363 (1993). Stated differently, an individual is seized "only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Michigan v Chesternut*, 486 US 567, 573; 108 S Ct 1975; 100 L Ed2d 565 (1988) (citation omitted).

In the instant case, a police officer observed defendant's vehicle parked improperly at one gas station and then leave the area when her patrol car approached. The police officer observed defendant's vehicle travel through a parking area where all the businesses were closed for the evening. The officer kept an eye on the vehicle, eventually allowing it to turn in front of her and then followed it to another gas station where it pulled up to the pumps. Defendant exited the vehicle and went inside the store. When he exited a few minutes later, the police officer engaged defendant in casual conversation. While they were talking, they approached defendant's vehicle and the officer was able to see loose cash spread across the back seat. At that point, the officer requested defendant's identification. Defendant argues that he was seized for Fourth Amendment purposes when the police officer requested his ID.

Contrary to defendant's argument, our Supreme Court's holding in *Jenkins*, 472 Mich at 33-34, makes clear that the Fourth Amendment is not implicated when an officer engages an individual in conversation or requests an individual's identification. Nothing in the record leads us to conclude that the trial court erred in finding that a reasonable person would have felt free to leave prior to or after this request for identification. Thus, a seizure did not occur at the time defendant was asked to produce identification. Our conclusion that a seizure had not occurred at this point is also buttressed by the fact that defendant was allowed to leave the officer's presence and return to the store to finish paying for items while she waited for LEIN results. Defendant was not seized until he was arrested for not having a valid license, thereby subjecting him to arrest for driving without a license.

In sum, we uphold the trial court's denial of defendant's motion to suppress evidence, based on its correct determination that a seizure implicating the Fourth Amendment occurred only after the officer had sufficient basis to arrest defendant and that evidence obtained thereafter was properly acquired through a search incident to arrest. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996).

Affirmed.

/s/ Christopher M. Murray
/s/ Henry William Saad
/s/ Michael J. Kelly